IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1314 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

FIROJ ALIMAHMAD MAVATI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KAMAL MEHTA ADDL.GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/03/98

ORAL JUDGEMENT

By this application, under Art. 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the detention order dt. 29/9/1997 passed by the Police Commissioner for the city of Ahmedabad, invoking his powers under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short the "Act"),

pursuant to which the petitioner is arrested and now kept under detention.

2. In order to appreciate the rival contention of the parties, necessary facts may, in brief, be stated. The Police Commissioner was appraised of the fact that the petitioner was a dangerous person and was terrorising the people and by his several criminal activities, he was disturbing the public order. The Police Commissioner, therefore, studied the records available in different Police Stations. He could know that about three complaints with Navrangpura Police Station against the petitioner were lodged. In all the three complaints, it is alleged that the petitioner committed the theft of scooters, the value of which is ranging from Rs.5,000/to Rs.25,000/-. The Police Commissioner then decided to hold detailed inquiry. After inquisition, he came to know that the petitioner's activities were not only confining to the scooter theft, but several other subversive activities also. He was extorting money from different people and putting the shopkeeper to imminent danger of death or injury, he was making them to succumb to his unjust demands. At times, because of the fear of the petitioner, the shopkeeper used to shut down their shutters of the shops. Whenever the petitioner used to move from place to place, he used to keep the weapons with him, and wielding the weapons, he was terrorising the people, with the result, people used to chevy. The detaining authority i.e. Police Commissioner,when thought it fit to record the statements of the persons, no one showed willingness to come forward and state, because of fear of violence from the petitioner, every one was feeling insecured. To make the people feel free, the Commissioner of Police found that stern action was absolutely necessary, but he found, after careful study that any action, if taken under general law sounding dull, would be a futile exercise. He, therefore, thought it fit to pass the order so as to curb the anti-social activities. The order of detention was then passed, pursuant to which the petitioner is arrested and is kept under detention.

3. Challenging the impugned order on several grounds, the application is filed but the learned advocate for the petitioner contends that he would like to confine to the only ground namely exercise of privilege. No doubt under Sec.9(2) of the Act, the detaining authority has the privilege not to disclose certain facts in the public interest, but the privilege has to be exercised judiciously and not arbitrarily. There is nothing on record justifying exercise of

privilege not to disclose the sources of the information. The privilege is not exercised in accordance with law. The petitioner could not get the particulars, he was entitled to. With the result, his right to make effective representation is marred. He then urged me to set aside the impugned order.

4. Mr. Kamal Mehta, learned APP has submitted that the Police Commissioner has taken the prompt action. He personally studied all the materials placed before him, the copies of which are also supplied to the petitioner. He was fully satisfied about the fact that the petitioner was a dangerous person and was likely to retaliate. The Police Commissioner, therefore, thought it fit not to disclose the particulars about the witnesses. When disclosure of certain particulars about the witnesses were accordingly in the public interest, withheld the discretion exercised by the Police Commissioner was quite just and proper. The order is, therefore, required to be maintained. When both have confined to the only point namely exercise of privilege under Sec.9(2) of the Act, I will confine to that point only going to the root of the case, and would not dwell upon other points.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating nondisclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view

to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress the particulars about witnesses keeping their safety in mind. No affidavit has been filed by the Police Commissioner who passed the order. When no affidavit explaining the circumstances under which the order of detention is passed, is filed, I am entitled to infer against the authority passing the order and it can be

assumed that without any just and proper cause, the privilege has been exercised, and without application of mind, the decision was taken by the authority. Reading the order, it appears that task of inquiry, whether fear expressed by the witnesses was genuine or imaginary or empty excuse, was entrusted to the Police Officer and whatever that Police Officer reported, has been accepted by the Police Commissioner, without application of mind. He has not studied personally the report submitted by the Police Officer. When he has mechanically accepted the report submitted, his satisfaction is vitiated, and therefore, the privilege exercised, being unjust and improper, the detention must be held to be unconstitutional and illegal.

7. For the aforesaid reason, this application is allowed. The order of detention dt.21/5/1997 passed by the Police Commissioner, Ahmedabad, being unconstitutional and illegal, is hereby quashed and set aside, and the petitioner is ordered to be set at liberty, forthwith, if no longer required in any other case. Rule accordingly made absolute.

(ccs)